Supreme Court, U. S.
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No. 75-1621

# In the Supreme Court of the United States

OCTOBER TERM, 1976

MIRA SLOVAK, PETITIONER

*v.*

ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

## SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENT

ROBERT H. BORK,
*Solicitor General,*
*Department of Justice,*
*Washington, D. C. 20530.*

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**SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENT**

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In our memorandum in opposition to the petition for a writ of certiorari in this case, we stated that "the Board * * * pointed out (a) that participants in the races could approach no closer than 1,000 feet to the spectators, whereas petitioner flew a plane within 25 feet of many people * * *" (Mem. in Opp. 5, n. 3). Petitioner correctly observes (Pet. Reply 3-4; Pet. Motion to Strike) that the reference to "within 25 feet" was inaccurate.

With regard to the proximity of petitioner's flight path to spectators and others in the immediate area, the Board in fact summarized the evidence as follows: (1) the flight was performed before a crowd of approximately 15,000 people (Pet. App. A10); (2) petitioner flew an aircraft at an altitude of less than 100 feet (*id.* at All) at a lateral distance of approximately 400 feet from the spectator stands (*id.* at A15); (3) at the time of landing, petitioner's aircraft was within 200 feet of other aircraft being moved into position (*id.* at A16); and (4) "no witness testified that

he actually saw any person or vehicle closer to [petitioner's] landing aircraft than [that]" (*ibid.*).*

Accordingly, we withdraw any suggestion that the Board found that petitioner flew his aircraft within 25 feet of any individual or that he in fact did so.

The factual inaccuracy contained in our memorandum in opposition did not, however, constitute "scandalous matter" within the meaning of Rule 40(5) of the Rules of this Court. Petitioner's motion to strike the memorandum on that ground should therefore be denied. The petition for a writ of certiorari also should be denied for the reasons stated in the memorandum.

Respectfully submitted.

ROBERT H. BORK,
*Solicitor General.*

JULY 1976.

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*The administrative law judge recited that one witness had observed petitioner fly the aircraft at an altitude of 10 to 25 feet above a ramp that was situated in front of the viewing stands (Pet. App. A19, A21). The ramp contained a pit area (Tr. 23), in which 2,500 to 3,000 (Tr. 40) or from 3,000 to 5,000 (Tr. 24) people were located. However, the ramp was 600 feet wide (Tr. 23), the pit area occupied only the 160 feet nearest the stands (*ibid.*), and petitioner's aircraft passed over the outer section of the ramp away from the pit area (Tr. 42).